

## § 1206.1-6

## 45 CFR Ch. XII (10-1-02 Edition)

alter the time limitations for the delivery of papers or other procedures set forth in this section.

(f) The results of the proceeding and any measure taken thereafter by ACTION pursuant to this part shall be fully binding upon the recipient and all agencies whether or not they actually participated in the hearing.

(g) A recipient may waive a hearing by notice to the responsible ACTION official in writing and submit written information and argument for the record. Such material shall be submitted to the responsible ACTION official within a reasonable period of time to be fixed by him upon the request of the recipient. The failure of a recipient to request a hearing, or to appear at a hearing for which a date has been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is then in the possession of ACTION.

(h) The responsible ACTION official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the date of any applicable hearing.

### § 1206.1-6 Time and place of termination hearings.

The termination hearing shall be held in Washington, DC, or in the appropriate Regional Office, at a time and place fixed by the responsible ACTION official unless he determines that the convenience of ACTION, or of the parties or their representatives, requires that another place be selected.

### § 1206.1-7 Termination hearing procedures.

(a) *General.* The termination hearing, decision, and any review thereof shall be conducted in accordance with the rules of procedure set forth in this section and §§ 1206.1-8 and 1206.1-9.

(b) *Presiding officer.* (1) The presiding officer at the hearing shall be the responsible ACTION official or, at the discretion of the responsible ACTION official, an independent hearing examiner designated as promptly as possible in accordance with section 3105 of title 5 of the United States Code. The presiding officer shall conduct a full and

fair hearing, avoid delay, maintain order, and make a sufficient record for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and he may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown shall otherwise determine.

(2) After the notice described in paragraph (f) of this section is filed with the presiding officer, he shall not consult any person or party on a fact in issue unless on written notice and opportunity for all parties to participate. However, in performing his functions under this part the presiding officer may use the assistance and advice of an attorney designated by the General Counsel of ACTION or the appropriate Regional Counsel: *Provided*, That the attorney designated to assist him has not represented ACTION or any other party or otherwise participated in a proceeding, recommendation, or decision in the particular matter.

(c) *Presentation of evidence.* Both ACTION and the recipient are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of all facts bearing on the issues. The issues shall be those stated in the notice required to be filed by paragraph (f) of this section, those stipulated in a prehearing conference or those agreed to by the parties.

(d) *Participation.* (1) In addition to ACTION, the recipient, and any agency which has a right to appear, the presiding officer in his discretion may permit the participation in the proceedings of such persons or organizations as he deems necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material.

(2) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from